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# In the Supreme Court of the United States

OCTOBER TERM, 1956

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No. 210

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GEORGE DEWEY STONEKING, *Petitioner*

v.

UNITED STATES OF AMERICA

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (Pet. 9-24; S.R. 7-22)[1] is reported at 232 F. 2d 385.

### JURISDICTION

The judgment of the Court of Appeals (Pet. 24-25; S.R. 23) was entered on April 24, 1956. A petition for rehearing was denied on May 28, 1956 (S.R. 29).

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[1] The record is designated "R."; the supplemental record is designated "S.R."

The petition for a writ of certiorari was filed on June 27, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether the trial court's comments on the evidence deprived petitioner of a fair trial.

2. Whether the trial court erred in failing to charge the jury with respect to the weight to be given to testimony of accomplices.

## STATUTE INVOLVED

18 U.S.C. 2113 provides in pertinent part:

> *Bank robbery and incidental crimes.*
>
> (a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or
>
> Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny—
>
> Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

* * *

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

* * *

(f) As used in this section the term "bank" means any member bank of the Federal Reserve System and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

## STATEMENT

In the United States District Court for the Western District of Missouri, petitioner was convicted upon the verdict of a jury (R. 36) under an indictment (R. 1-4) charging armed robbery in February 1955 of a bank in Carl Junction, Missouri, insured by the Federal Deposit Insurance Corporation, and conspiracy to do so. 18 U.S.C. 371, 2113. He was sentenced to a seven-year prison term on the robbery count and a three year term on the conspiracy count, the sentences to run consecutively (R. 36). On appeal, the conviction was affirmed (Pet. 9-24; S.R. 7-22).

The evidence with respect to the issues raised by the petition for a writ of certiorari may be summarized as follows:

Petitioner's two companions in the conspiracy and robbery, Vaughan and Courtright, were the chief government witnesses. Vaughan testified that he was a defendant in the case, had pleaded guilty, and was awaiting sentence. Courtright lived in Vaughan's house in Webb City, Missouri. A few days before the robbery petitioner came to the house and talked to Courtright. On the day of the robbery Vaughan drove downtown with Courtright in Vaughan's dark blue 1947 Ford. Vaughan remained at a bar while Courtright left for an hour. On Courtright's return, they drove west of town on the Carl Junction Road, where Vaughan parked the car headed east (R. 15). Courtright then got into petitioner's light green car and left toward the west with petitioner. After ten or fifteen minutes they returned and Courtright again got into Vaughan's car. Courtright had a sack with him which Vaughan found contained money when they reached Vaughan's house (R. 15).

Courtright testified that he had also entered a plea of guilty and was awaiting sentence. He said that shortly before the robbery he and petitioner had discussed the project in his bedroom at Vaughan's house and he identified government's exhibit 15 as "exactly" like the gun petitioner had furnished him, the Sunday before, for robbing the bank. The plan was for him to rob the bank and for petitioner to wait for him in petitioner's light green car. On the date of the robbery Courtright, using Vaughan's car, went to petitioner's house and asked him if he was ready to rob the bank. Petitioner replied that he would be in a few minutes; Courtright then went home and

ut on coveralls and a cap, obtained the pistol, and eturned to petitioner's house (R. 16-17). Petitioner aited for him near the Webb City Library while e (Courtright) picked up Vaughan at the bar. After stop to buy wine, Vaughan and Courtright drove o a point on a gravel road two miles east of Carl unction, Missouri, where Vaughan turned his car round and parked it facing east. Courtright and etitioner then drove on to Carl Junction in petiioner's green Ford. They stopped near a white house nd petitioner got out of the car for a minute and ame back wiping his hands. In Carl Junction they arked near the bank. Courtright entered the bank vith the gun concealed under his coveralls and told he teller to put the money in a pillow slip which he anded her. Petitioner picked up Courtright outside he bank and they drove east to Vaughan's car. Courtight transferred to Vaughan's car and petitioner drove off to the east ahead of them and disappeared (R. 16-17).

Both Vaughan and Courtright testified that they drove by petitioner's house on the way home from the obbery but did not see his car there (R. 15, 17). Vaughan said that he put the pistol in his dresser drawer when he got home and that it resembled government's exhibit 15 (R. 15). Courtright said that petitioner told him he had traded a rifle for the pistol (R. 18). The pistol was found at Vaughan's home (R. 12, 13) and was identified by its former owners as the one which had been traded to petitioner (R. 14).

Reuben Stone testified that he saw a man run out of the bank; that a light green Ford car crossed the

intersection and appeared about to hit the running man; that the man ran out of his line of vision and he did not know whether the man entered the car. Mrs. Wells ran out of the bank and told Stone that it had been robbed, and Stone and a newspaper editor (one Miller) jumped into Mrs. Wells' car and followed the green Ford. A "preacher" also gave chase, following the Wells' car.[2] Stone said that they overtook the green Ford and an older model blue Ford about 2½ miles out of town. At the intersection of Highway 43 the blue car turned north and the green car south. At that point Stone "looked right in the eye" of the driver of the green car from a distance of about 18 or 20 feet. He identified the driver as petitioner. He then followed the blue car into Webb City, and in it he observed the man he had seen run out of the bank and another man. The blue car stopped near a farm house and Stone stopped 200 feet back. Reverend Bottles and a policeman soon approached (R. 7). The two occupants of the blue car, Courtright and Vaughan, entered the house and were arrested as they emerged a little later (R. 8). On cross-examination, Stone admitted a discrepancy in his testimony at a preliminary hearing in that he then had described the time during which he saw the face of one of the men as a fraction of a second.

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[2] Miller testified that the green car got out of sight during the time he and Stone were getting under way; that at the intersection of Highway 57 a salesman who was parked there (R. 6) told them that the green car had continued on over the hill; that a short time later they overtook the green car, which was following an old model blue car (R. 8, 9).

whereas at the trial he estimated this time as "a matter of seconds, I would say three seconds" (R. 8).

Reverend Bottles testified that on being told of the robbery by Mrs. Wells he followed Stone in his car; that at Highway 57 Stone talked with a man and then continued east; that there was a blue Ford in front, then a two-tone green car, then Stone's car; and that at Highway 43 all cars stopped for the stop sign. At that point Stone went north after the blue car and Reverend Bottles followed the green car south at speeds up to 80 miles per hour into Webb City, where it stopped in front of the library (R. 9-10). He identified the driver of the green car as petitioner. He then drove around town and back to the library and found the green car still parked there. Mud had been smeared on the license plate but he had obtained all but one letter of the number during the pursuit. He followed the car again when it left the library, until petitioner parked in a driveway on a dead end street. Reverend Bottles then notified the police (R. 10).

In his instructions to the jury the trial judge said (R. 31-32):

> You heard the witness Reuben Stone, who said that at the intersection of Highway 43 and this gravel road, as the defendant Stoneking looked around over his shoulder—some dispute about whether it was for one, two, or three seconds; to my mind that is of no consequence at all—you can determine whether it is or not; I would say, no—he said, "I looked him right in the eye and that is him." If you believe that testimony is

true, then the defendant Stoneking is guilty on the First Count.

Now, then, who else? The Reverend Bottles says that he identifies, he recognizes and points out the defendant Stoneking as the driver of the Ford, as he followed the Ford. Now, if you find and believe that testimony is true, then, again, you would find the defendant Stoneking guilty.

Of course, on each of these Counts you have to find, however, that he was a principal; that he "aided, counseled, abetted or induced" the commission of the holdup of the Bank of Carl Junction.

Is he otherwise identified? You may remember the testimony, of course, of Courtright and of Vaughan. They have pleaded guilty here, but they are witnesses in the case. They have told you in detail all of what happened and that Mr. Stoneking was a member of the group, and what his part in it was.

The credibility of all of these witnesses, whether you believe them or not, is for you. If you believe them and believe that Stoneking—we are talking about the First Count now—did aid, counsel and abet with Courtright and/or Vaughan to go out to the Bank of Carl Junction to hold it up, and that in furtherance thereof drove his automobile out there, and from this point two and a half miles east of Carl Junction took Courtright with him, and that they did go into Carl Junction for the purpose of having Courtright go into the Bank and get the money out of the Bank by the use of the firearms—and he did so—and that Stoneking was waiting for him, and when Courtright came out and got into the Stone-

king automobile they headed on back toward the east with the money, if you believe that evidence to be true, they you would find the defendant Stoneking guilty.

In discussion of the charge after its completion, petitioner's counsel objected to the comment that to the court's mind the discrepancy in Stone's testimony concerning the length of time during which he observed petitioner at the highway intersection was of no consequence (S.R. 1). Petitioner did not object to the court's further statement, though he raises the point in his petition here (Pet. 6), that if the jury believed Stone's and Reverend Bottle's testimony with respect to their identification of petitioner they should find him guilty.

Petitioner's counsel also stated (S.R. 2) that, if the judge had failed to discuss in his charge the subject of corroboration of the accomplice testimony of Vaughan and Courtright, he desired to object to the omission of such an instruction. The judge stated that he had mentioned it in connection with the conspiracy "but only on conspiracy" (S.R. 2). Actually, the court's charge (R. 23-35) contained no discussion with respect to the weight of accomplice testimony. Petitioner's counsel had submitted an instruction that uncorroborated testimony of accomplices ought to be received with great caution, which the court denied insofar as not included in the charge as given (R. 22).

## ARGUMENT

1. (a). Petitioner objects (Pet. 6) to the fact that the trial judge, in discussing in his instructions the

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petitioner guilty (R. 31, 32). But
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then adverted to the testimony of
ourtright, stating that the "credibility
nesses, whether you believe them or
ou" (*supra,* p. 8). Reading the
ole, as we must, it is clear that the
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ottles were not, as petitioner contends,
an instruction that the jury should
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of that independent eyewitness testi-

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itioner did not raise any objection to
charge though the record shows ample
him to have done so (S.R. 2). *Boyd*
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(b). The cou
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rt's comments to which petitioner did
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Pet. 3-6), were clearly fair comment
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little importance in the discrepancy
s testimony at the preliminary hear-
timony at the trial with respect to the
sed time occurring during his momen-
n of petitioner at the intersection was

not improper and could not have been prejudicial in the context of the charge as a whole, especially since Stone was positive in his identification and the judge immediately told the jury they could determine whether the length of time Stone had an opportunity to observe petitioner was important (*supra*, p. 7). The comment to the effect that petitioner's alibi evidence was, to the judge's recollection, not inconsistent from a time standpoint with his having taken part in the robbery was certainly a fair analysis of the evidence.

2. There was no error in the trial judge's failure to give an instruction that uncorroborated testimony of accomplices should be received with great caution. It is settled that while it is the better practice to give such an instruction in a case of uncorroborated accomplice testimony, it is not reversible error to omit it. *Caminetti* v. *United States*, 242 U.S. 470, 495; (Pet. 20-21). Moreover, this case is not one of uncorroborated accomplice testimony. The weapon used in the robbery was traced directly to petitioner (*supra* pp. 4, 5) and the witnesses Stone and Reverend Bottles both identified him. In addition, as noted by the Court of Appeals, there could have been no doubt in the jurors' minds as to the status of petitioner's accomplices. Each stated at the outset of his testimony that he had pleaded guilty and was awaiting sentence, and the judge expressly referred to their having pleaded guilty (*supra*, p. 8). See *United States* v. *Bucur*, 194 F. 2d 297 (C.A. 7).

## CONCLUSION

The decision below is clearly correct. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JULY 1956.

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